

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Real Estate
Appraiser's License of
Donald G. Pelton,
License No. 4001755

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter is before Administrative Law Judge (ALJ) George A. Beck, on Minnesota Department of Commerce's motion for summary disposition. The Department filed its motion with the Office of Administrative Hearings (OAH) on September 4, 1998. The Respondent, Donald Pelton, has not submitted a response. No appearances were made. The record closed on September 24, 1998.

Stephen K. Warch, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, represented the Department of Commerce ("Department"). There have been no filings by or on behalf of Donald G. Pelton ("Respondent").

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NOTICE

This Report is a recommendation and not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David B. Gruenes, Commissioner, Minnesota Department of Commerce, 133 E. 7th Street, St. Paul, Minnesota 55101, telephone (612) 297-3238, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether the Commissioner of Commerce should take adverse licensing action against the real estate appraiser's license of Respondent, Donald G. Pelton.

Based upon the record in this matter, the Administrative Law Judge makes the following:

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FINDINGS OF FACT

1. On July 24, 1998, an employee of Metro Legal Services served the Notice of and Order for Hearing in this matter personally upon the Respondent, Donald G. Pelton, at 1909 Montana Avenue E., St. Paul, Minnesota, by handing to and leaving with Michael Schaumburg, a person of suitable age and discretion, residing at the usual abode of Respondent, a true and correct copy of the Notice of and Order for Hearing.

2. The Notice of and Order for Hearing served upon Respondent included the following notice in bold-face type on page 14:

If Respondent fails to attend or otherwise appear at any prehearing or settlement conference or the hearing in this matter or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondent's real estate appraiser's license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief.

4. The hearing in this matter was scheduled for September 16, 1998 at 9:30 a.m.

5. On August 26, 1998, the Department requested an Order continuing the hearing, pending a decision on the Department's motion for summary disposition.

6. By letter dated August 31, 1998, the Administrative Law Judge ordered the Department to file its motion for summary disposition before 4:30 p.m. on September 4, 1998, and the Respondent to file his written reply before 4:30 p.m. on September 18, 1998. The Judge also cancelled the hearing scheduled for September 16, 1998 pending the outcome of the motion.

7. On September 4, 1998, the Department filed its motion for summary disposition with the Office of Administrative Hearings and personally served a copy of the motion on Respondent. The Respondent did not file a response to the motion.

8. Because Respondent failed to comply with the Judge's interlocutory order of August 31, 1998, Respondent is in default. Pursuant to Minn. Rules 1400.6000 (1997), the allegations contained in the Notice of and Order for Hearing and the Department's Motion for Summary Disposition are hereby taken as true and are incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minnesota Statutes §§ 82B.07, 82B.20, 45.027 and 14.50 (1998).

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent submitted no response to the Department's Motion for Summary Disposition in violation of the Judge's August 31, 1998 interlocutory order. Consequently, Respondent is in default and the Department's motion for summary disposition is unopposed. Pursuant to Minnesota Rules 1400.6000, the allegations contained in the Notice of and Order for Hearing and the Department's Motion for Summary Disposition are hereby taken as true.

4. The Department has detailed in the Notice of and Order for Hearing and in its Motion for Summary Disposition, undisputed facts regarding five separate appraisals performed by Respondent in a fraudulent, negligent and incompetent manner. Respondent's conduct with respect to these appraisals constitutes separate and multiple violations of Minnesota Statutes §§ 82B.20, subd. 2(4), (7) and (13) (1996); Minnesota Rule 2808.6000, subps. 1 and 3 (1997); and the Uniform Standards of Professional Appraisal Practices ("USPAP") Standards Rules 1-1(b), 1-1(c), 1-2(c), 1-4(g), 1-5, 2-1(b) and 2-2. Respondent's conduct included the following:

- (a) Respondent used inappropriate "comparable" sale properties in his appraisal reports in violation of Minn. Stat. § 82B.20, subd. 2(4) and (7) (1996) and Minn. R. 2808.6000, subp. 3A(4) (1997).
- (b) Respondent failed to identify and consider appropriate procedures and market information required to perform the appraisals in violation of USPAP Standards Rule 1-4(g), Minn. Stat. § 82B.20, subd. 2(13) (1996) and Minn. R. 2808.6000, subp. 1 (1997).
- (c) Respondent failed to comment on negative factors regarding appraised properties, the properties' neighborhoods and the presence of adverse influences in violation of Minn. Stat. § 82B.20, subd. 2(4) and (7) (1996), and Minn. R. 2808.6000, subp. 3A(2) (1997).
- (d) Respondent committed substantial errors of omission or commission that significantly affected appraisals and failed to consider easements, encumbrances and other significant items in violation of USPAP Standards Rules 1-1(b), 1-1(c) and 1-2(c), Minn. Stat. § 82B.20, subd. 2(13) (1996), and Minn. R. 2808.6000, subp. 1 (1997).
- (e) Respondent failed to consider and analyze current agreements of sale or listings of the properties being appraised, when such information was available to Respondent in the normal course of his business, in violation of Minn. Stat. § 82B.20, subd. 2(4), (7) and (13) (1996), USPAP Standard Rules 1-5, and Minn. R. 2808.6000, subp. 1 (1997).
- (f) Respondent failed to consider "repair", "decorating" and other similar allowances provided by the sellers to the buyers in the purchase agreements in violation of Minn. Stat. § 82B.20, subd. 2(4) and (7) (1996).

- (g) Respondent used inaccurate or misleading factual data about the subject neighborhood, site, improvements or comparable sales, including inaccurate data regarding the sale price of the appraised properties and comparables, in violation of Minn. Stat. § 82B.20, subd. 2(4) and (7) (1996), Minn. R. 2808.6000, subp. 3A(1) (1997), and USPAP Standards Rule 2-1(b).
- (h) Respondent failed to promptly state type of appraisal report listed in violation of USPAP Standards Rule 2-2, Minn. Stat. § 82B.20, subd. 2(13) (1996), and Minn. R. 2808.6000, subp. 1 (1997).

5. By the conduct referenced above, Respondent has engaged in an act or practice which demonstrates Respondent is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or licenses granted by the Commissioner, in violation of Minn. Stat. § 45.027, subd. 7(4) (1996).

6. As a result of Conclusions 4 and 5 above, the conduct described in the Notice of and Order for Hearing and the Department's Motion for Summary Disposition constitutes grounds justifying the Commissioner to take disciplinary action against Respondent's real estate appraiser's license pursuant to Minn. Stat. §§ 82B.07, 82B.20, subd. 1 and 45.027, subd. 6-7 (1996).

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Commerce take disciplinary action against the real estate appraiser's license of Donald G. Pelton.

Dated this 1st day of October 1998.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Default